

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)

In Re: \*

ROBERT P. BREEDEN, JR., Case No. 09-28058-RAG  
\* (Chapter 13)  
Debtor

\* \* \* \* \*

ROBERT P. BREEDEN, JR.,  
\*  
Movant

v. \*

CARROLLTON BANK,  
\*  
Respondent

\* \* \* \* \*

RESPONSE TO MOTION TO AVOID LIEN ON REAL  
ESTATE TO THE EXTENT IT IMPAIRS DEBTOR'S  
EXEMPTIONS PURSUANT TO 11 U.S.C. SECTION 522(f)

Carrollton Bank, Respondent, in answer to the Motion to  
Avoid Judicial Lien on Real Estate, filed by the  
Debtor/Movant, Robert P. Breeden, Jr., states as follows:

1. The Respondent admits the allegations contained in  
Paragraph 1 of the Motion.
2. The Respondent admits the allegations contained in  
Paragraph 2 of the Motion.
3. The Respondent denies the allegations contained in  
Paragraph 3 of the Motion.

4. The Respondent denies the allegations contained in Paragraph 4 of the Motion.

5. The allegations of Paragraph 5 of the Motion are admitted by the Respondent, except that the two (2) Judgments by Confession were obtained in the Circuit Court for Harford County by Carrollton Bank against Mr. Breeden.

6. The Respondent admits the allegations contained in Paragraph 6 of the Motion.

7. The Respondent denies the allegations contained in Paragraph 7 of the Motion.

8. The Respondent denies the allegations contained in Paragraph 8 of the Motion.

9. The Respondent denies the allegations contained in Paragraph 9 of the Motion.

FIRST AFFIRMATIVE DEFENSE

10. For and as a first affirmative defense, the Respondent states that its judgments by confession, entered and recorded by the Circuit Court for Harford County on October 5, 2005 are the first priority liens on the Debtor's real property.

SECOND AFFIRMATIVE DEFENSE

11. For and as a second affirmative defense, Respondent states that the Debtor/Movant's Deed of Trust loan from Taylor, Bean & Whitaker recorded on October 1, 2008 in the

amount of \$228,882.00 is not a Purchase Money Deed of Trust under §7-104 of the "Real Property Article" of the Maryland Code and, as a result, is a second lien on Debtor's real property and subordinate to the first priority judgment liens of respondent. The said second Deed of Trust fails to recite that it is for Purchase Money or a Purchase Money Deed of Trust as is required by Maryland law, supra.

THIRD AFFIRMATIVE DEFENSE

12. For and as a third affirmative defense, Respondent states that only a purchase money mortgage or deed of trust takes priority over a prior recorded and indexed judgment lien. A non-purchase money mortgage or deed of trust does not take priority over a prior recorded and indexed judgment lien. See Md. Code, Real Property Article, §7-104. See also Montgomery County v. May Dept. Stores Co., 352 Md. 183, 721 A.2d. 249 (1998).

FOURTH AFFIRMATIVE DEFENSE

13. For and as a fourth affirmative defense, Respondent, Carrollton Bank, states that the Debtor/Movant did, on his own, "filed" Schedule A-Real Property value his residence at a current value of \$230,000.00. The judgment liens of Carrollton Bank amount to only \$207,741.84. The said judgment liens are first priority liens on the Debtor's residence, are fully secured by the residence, and

may not be modified or avoided by the Debtor as Carrollton Bank is a holder of a secured claim in real property that is the Debtor's principal residence, under 11 U.S.C. §1322(b)(2).

WHEREFORE, Carrollton Bank, Respondent, respectfully requests that this Court deny and dismiss the Movant, Robert P. Breeden, Jr.'s Motion to Avoid Judicial Lien on Real Estate and grant the Respondent such other and further relief as is just and proper.

ROGERS, MOORE & ROGERS, LLP

\_\_\_\_/S/ROBERT J. PARSONS, II\_\_\_\_  
ROBERT J. PARSONS, II  
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Attorneys for Respondent  
Carrollton Bank

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>th</sup> day of November, 2009, I mailed a copy of the foregoing Response to Motion to Avoid Lien on Real Estate to the Extent it Impairs Debtor's Exemptions pursuant to 11 U.S.C. §522(f) via email to (1) Jeffrey M. Sirody, Esq., Attorney for Debtor/Movant, (2) Gerard R. Vetter, Esq., Chapter 13 Trustee, (3) Office of the

U.S. Trustee; and by first class mail, postage prepaid to (4)  
Robert P. Breeden, Jr., 55 Oak Crest Court, Bel Air, MD  
21015.

    /S/ROBERT J. PARSONS, II      
ROBERT J. PARSONS, II